

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-220395

**DATE:** February 3, 1986

**MATTER OF:** Eastern Maintenance Services, Inc.

**DIGEST:**

Contracting officer's reliance upon tax value, rather than fair market value, of individual bid bond surety's real estate holdings in computation of his net worth is reasonable where surety failed to provide the contracting officer with adequate information regarding the location and value of these holdings. It was the surety's responsibility to provide the contracting officer with sufficient information upon which to base a determination of responsibility.

Eastern Maintenance Services, Inc. protests the Air Force's rejection of its bid under IFB No. F09607-85-B0016 for shelf-stocking and custodial services at the Moody Air Force Base (Georgia) Commissary. The contracting officer rejected Eastern's bid due to that firm's failure to establish the financial adequacy of one of its individual bid bond sureties.

We deny the protest.

Eastern submitted the fourth lowest bid in response to the solicitation. The agency rejected the two low bidders for failure to submit bid bonds, and the third low bidder for deficiencies relating to its bond. The solicitation required a bid guarantee of 20 percent of the bid price, and Eastern submitted a bond with a penal amount of \$22,680 listing two individual sureties.<sup>1/</sup> The first surety

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<sup>1/</sup> Federal Acquisition Regulation, 48 C.F.R. § 28.202-2 (1984), requires that two individual sureties must execute the bond, each of whom must have a net worth equal to the penal sum of the bond.

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indicated a net worth of \$3,859,736 on her Affidavit of Individual Surety (Standard Form 28); the other indicated a net worth of \$1,553,800. Neither individual completed item 10 of the affidavit which required information regarding his or her outstanding surety obligations. In addition, the second surety failed to specify his other liabilities (item 7), the location of his real estate (item 8), and the amount of assessed valuation of this realty for taxation purposes (item 8).

In response to requests by the contracting officer for the missing information, both sureties submitted lists of the bid and performance or payment bonds on which they were sureties. In addition, the second surety represented that he had no other liabilities, and submitted a list identifying the town, state, common name, and fair market value of each piece of his realty. He neglected, however, to provide the assessed value of this property for tax purposes. The contracting officer apparently accepted the additional information from the first surety as she raised no further questions concerning the first surety's responsibility.

Because the second surety failed to include the assessed valuation of the real estate and because of the rather sketchy description of the properties supplied by the surety the contracting officer contacted the county tax offices where the listed properties were supposedly located. While she found that the surety did indeed have extensive real estate holdings in these counties, the descriptions and the value assigned the various properties by the tax offices did not match the descriptions provided by the surety. For example, the contracting officer was unable to verify at all the existence of the "Pineview Farm," valued by the surety at \$327,000<sup>2/</sup>, or the properties listed by the surety as "Residence & Lot-Bunce Farm" and "Wade Land - 195," valued at \$20,000 and \$50,000, respectively. In view of the problems in identifying the real estate from the descriptions provided by the surety, the contracting officer used the descriptions and assessed value provided by the county tax offices in totaling the value of the surety's real estate. Using this method she

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<sup>2/</sup> After the contracting officer determined the surety nonresponsible the Air Force did locate a tract owned by the surety of approximately half the size of "Pineview Farm" listed by the surety with a tax value of \$47,420.

calculated the value of the surety's real estate holdings to be \$420,280. In the list provided to the contracting officer after bid opening, the surety contended that his real estate holdings were worth \$1,402,000. Using the contracting officer's valuation of the real estate, the surety's net worth would be at most \$977,520,<sup>3/</sup> while using the surety's most recent figures it would be \$1,458,800. The protester admits that the surety's outstanding bond liabilities total \$1,371,314.73; thus, if the contracting officer's method of calculating the surety's net worth was proper, its net worth is not sufficient to cover its outstanding bond liabilities and the bond was properly rejected. Despite the protester's objections, we think the contracting officer acted reasonably under the circumstances.

The protester's objections to the contracting officer's actions center primarily on her use of the assessed value of the land for tax purposes rather than the fair market value assigned by the surety. The protester argues that it is common knowledge that property is assessed for tax purposes at less than its market value and that in the locations in question those assessments are 5 years old. Further, the protester argues that the contracting officer should have been able to verify easily the listed real estate at the county tax offices.

We disagree.

The adequacy of a surety's net worth is a matter of responsibility which may be established anytime before contract award. Consolidated Services, Inc., B-206413.3, Feb. 28, 1983, 83-1 CPD ¶ 192. Since such a determination involves the exercise of subjective business judgments we will not disturb it unless it is shown to be unreasonable. See CWC Inc., B-209383, Oct. 19, 1982, 82-1 CPD ¶ 347. In this regard, we think it was the surety's obligation to provide the contracting officer with sufficient information to clearly establish its responsibility; that is, that it

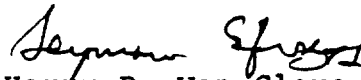
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<sup>3/</sup> In arriving at this figure we did not subtract the \$500,500 listed by the surety on the original affidavit as real estate encumbrances since the contracting officer was not able to verify all the real estate originally listed and we do not have any information regarding the encumbrances that pertain to the real estate verified by the contracting officer.

had sufficient financial resources to meet its bond obligations. See Manufacturing Systems International, B-212173, May 30, 1984, 84-1 CPD ¶ 586.

The problems here were caused first by the surety's failure to include any reasonable description of the location of the real estate or its assessed valuation for tax purposes on its original surety affidavit. Further, even when the surety was given the opportunity to amend his initial inadequate affidavit he persisted in supplying imprecise location descriptions and again failed to include the assessed valuation for tax purposes. The contracting officer contacted the local tax offices and found that the real estate records listed holdings which did not match those described in the list submitted by the surety. In these circumstances, we think she acted reasonably in discounting the values assigned to the real estate by the surety and using the listings and the valuation contained in the counties' records.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel